him here. There was clear evidence that the Police had taken numerous statements from Lua Lian Chai, at least, before the first trial, and if they had obtained reliable information from these statements that Tan Geok Peng was present when the request for a loan was made, it is hard to believe that Tan Geok Peng would not have been examined on the point by the prosecution at the first trial. There must be grave doubt, in my opinion, whether Tan Geok Peng was present at the request for the loan as alleged. Having come to the conclusion that the learned President should not have relied on his evidence, the question then requiring my very serious consideration was whether a conviction without reliance on Tan Geok Peng's evidence could properly be upheld. In this connection it is pertinent to remember that the learned President had had the advantage of seeing Lua Lian Chai, and accepted him as a witness of truth. More important, however, to my mind is the account book (Exhibit P1). In relation to it the following passage occurs in the learned President's grounds of judgment :—

"The private ledger (Exh. P1) was vigorously attacked as a forgery made expressly for this case. The more I examined this ledger and Entry Exh. P6 in particular the more convinced I became that it was genuine. It was pointed out that the entry was cunningly made next to last in the book. From the date of the first entry this seemed the proper place. I could not agree that the ink for Ex. P6 was much fresher than the ink in the rest of the book. Looking at other entries made at the same time the ink appeared similar to me. It will be noted that the whole ledger closes on 31 August 1948 i.e. half way through the Chinese Year. All the closing entries appeared to me to be in the same ink. I am entirely satisfied as to the genuineness of this ledger."

"I set very great weight upon the evidenciary value of this entry. The book in which it was made was the private ledger, it was not the book kept in Romanised Malay required by the Rubber Supervision Enactment. At the time when that entry Ex. P6 was made there seems to me to have been no reason for making it other than that the defendant did take $200. It was not the lender who came forward to claim his money: he had written it off years ago. If that entry and counter entry were made in 1948 as I firmly believe then the only reasonable explanation is the loan as explained by PW7 and PW8. Had they not written it off as a bad debt its evidenciary value would still have been strong, though not nearly so strong. I can see no reason why PW7 and PW8 should have been manufacturing false evidence against the defendant in 1948 or at any later date. I regard this as a bona fide entry in a Chinese business man's private ledger which was meant for his perusal only and therefore very strong corroborative evidence."

Put briefly the manner in which this ledger implicates the appellant is that on one page headed "Pasir Puteh New District Officer" there is on the debit side an entry dated 7th March 1948. "To loan taken on 4th March $200", and on the credit side opposite the first entry an entry dated 31st August 1948. "By transfer from ledger to Bad Debt Account $200". I had the advantage of being in as good a position as the trial Judge in assessing the value of this evidence. I may say that after careful consideration of the submissions that it was not genuine, I am in entire agreement with the learned President both as to his reasoning and conclusions regarding this account book. There is evidence that a certain amount of animosity existed towards the appellant, but I do not think that there is the slightest possibility this account book was forged for the purpose of building up a case against him. If one accepts this evidence in conjunction with Lua Lian Chai's own testimony I do not think there can be any reasonable doubt that Lua Lian Chai made a "loan" of $200 to the appellant in March, 1948. In the circumstances, even forming the views I did of Tan Geok Peng's evidence, I saw no reason to hold that the conviction was against the weight of the evidence.

There were also a number of minor criticisms levelled against the judgment but I do not think they are of serious substance. As I mentioned in briefly delivering my decision orally I gave this case my very careful consideration and was unable to see any ground for interference with the President's decision.

Appeal dismissed.

HUANG CHIN SHIU v. REX.

[App. Crim. Juris. (Spenser Wilkinson, J.) November 28, 1951]

[Penang — Criminal Appeal No. 28 of 1951]

Criminal trial — Plea of guilty — Statement of facts by prosecution — Interpreter — Interpreter not conversant with accused's dialect — Accused's right to suitable interpreter — Duty of Court Interpreter — Duty of Court.

After an accused has pleaded guilty, if the statement by the prosecuting officer of the facts of the case made for the purposes of sentence does not in itself disclose an offence, this should put the Magistrate on his inquiry, but it is not necessarily a sufficient ground upon which an Appellate Court will allow the accused to withdraw his plea of guilty.

It is the duty of an interpreter not only to make sure that he and the accused understand one another but also to inform the Court if there is any difference of language between them which might cause difficulty; and it is the duty of Magistrates to ensure, as a matter of routine, that this is always done.

Case referred to :—

(1) *Fong Hong Sium v. Public Prosecutor* (1950) M.L.J. 293.

CRIMINAL APPEAL

R. D. Hume for the appellant.

C. M. Sheridan (D.P.P.) for the respondent.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Spenser Wilkinson, J. : — In this case the accused was charged in the Magistrates' Court as follows :—

"That you on 27th July, 1951 in Penang being legally bound by oath to state the truth on a certain subject to wit, to state the length of your residence in Malaya for your application for Federal Citizenship to Mr. Lim Cheng Law a Justice of the Peace who is authorised by law to administer oath, did make to such aforesaid person a statement which was false or which you knew to be false to wit, that you have resided in Malaya for not less than 20 years and that you have thereby committed an offence punishable under section 181 of the Penal Code."

The slip or clerical error whereby the word "or" has been substituted for the word "and" in the phrase "which was false and which you knew to be false" is not one which could normally be said to have prejudiced the accused and, in the view which I take in this case, I need do no more than draw attention to it.

In his grounds of Judgment the learned Magistrate says that from the facts given by the Prosecuting Officer and admitted by the accused it appeared to the Court that the accused had committed the offence with which he was charged. The facts as outlined by the Prosecuting Officer were as follows :—

"On 27.7.51 accused made signed declaration before Justice of the Peace in which he stated he had been resident in Federation of Malaya for 20 years. Subsequently in applying for an entry permit, he signed a declaration stating that he had been resident in Federation of Malaya for 8 years. 16 years' continuous residence necessary in connection with application for Federal Citizenship.

Accused admits facts."

If those were really the only facts available then clearly no offence was disclosed. If it is true that the accused has been resident in Malaya for 20 years then obviously it is equally true that he has been been resident in Malaya for 8 years; only if the first statement is, in fact, false will the offence charged have been committed. The Prosecuting Officer, however, did not state that this declaration was false, and the way he put the facts seems to have led the Magistrate into the error of supposing that because a subsequent declaration for a different purpose stated a lesser term of residence this implied that the earlier statement giving a longer residence must be untrue. I think the Magistrate would have done well to clear up this point and to enquire whether the first statement was or was not true. However, a statement of facts by the Prosecuting Officer after a plea of guilty is made simply for the purposes of sentence. The fact that such a statement is inadequate and does not, in itself, disclose an offence is not, in my opinion, necessarily a sufficient ground for allowing an accused person who has pleaded guilty to withdraw that plea. If, therefore, this point had stood alone I should have hesitated to allow the appeal.

But there is a second and more important point involved in this appeal. The accused applied at the hearing of the appeal for leave to call additional evidence before me and, for the purposes of this application, he filed an affidavit. I did not accede to the accused's application to call further evidence at this stage of the proceedings regarding the actual length of his residence in Malaya. I did, however, admit as additional evidence the first two paragraphs of his affidavit, which read as follows :—

"1. I am a Chinese, born in the Khengchew Province in China and can only understand very little of the Hokkien dialect.

2. When I was charged before the First Class Magistrate on the 9th day of October, 1951 I intimated to the interpreter that I would rather speak in the Khengchew language as I only understand very little of the Hokkien language. He told me he could not speak the Khengchew language and the conversation was therefore done in the Hokkion language."

I also decided to record the evidence of the Court interpreter through whom the plea of guilty was taken.

There was to some extent a conflict of evidence as to exactly what happened when the accused was charged in the Court below, but the interpreter in his evidence stated as follows :—

"I spoke to the accused in the Hokkien dialect. I did not know if he was a Hokkien. I did not ask him. Hokkien dialect is the common dialect in Penang and I spoke to him in Hokkien and he could understand me. When I spoke to him he could answer me. We do not make it a practice in the Lower Courts to ask an accused person in what language he wishes to speak. I did not do so in this case. I now know that this man is a Khengchew. That is Hylam. It differs considerably from Hokkien."

In view of this evidence I came to the conclusion that the plea of guilty could not stand. It is to my mind essential to the validity of a plea of guilty that the accused should fully understand what he is pleading to; and it is impossible to be sure that he has understood, unless the charge has been explained to him in a language with which he is entirely conversant. Legal phraseology is apt to be confusing to a layman, even in his own native language, and nobody can be expected to understand all the implications of a criminal charge, if it is read out to him in what is to him a foreign language. In the case of *Fong Hong Sium v. Public Prosecutor*[1] the opinion was expressed that an accused person is entitled to have proceedings interpreted to him in any language which he desires to use, and in the course of the judgment in that case the following passage occurs :—

"It is a general rule of practice that, unless the interpreter is officially qualified in the language, the Court

should ascertain that he can understand, and be understood by the accused with sufficient ease to enable the proceedings to be properly conducted. The most convenient method is to allow him to talk for a few moments with the accused and to enquire whether they can so understand one another. When the Court is satisfied of this, it should be incorporated in the record before the evidence is recorded. There are, of course, cases when this would be quite unnecessary, for example, if both the accused and interpreter are Siamese and are speaking Siamese and the interpreter is fluent in English."

With respect I entirely agree with those remarks but I go further. In a large number of cases in the Magistrates' Courts in this country the accused speaks a language not understood by the Magistrate, so that what transpires between the accused and the interpreter is unknown to the Court. It is, therefore, the duty of the interpreter not only to make sure that he and the accused understand one another but it is also his duty to inform the Court, if there is any difference of language which might cause any difficulty. If the interpreter present cannot converse freely with the accused in the language of his choice the Court must be informed so that a suitable interpreter can be found, however inconvenient this may be to the Court, to the parties or to the witnesses.

Magistrates also have a duty in this matter. In the example given in the above quoted extract from the judgment in *Fong Hong Sium v. Public Prosecutor*[1] there would be no difficulty; but if in that example the word "Chinese" is substituted for the word "Siamese" the situation is entirely different. As is well known it is not enough that for a Chinese accused there should be a Chinese interpreter — there must be a Chinese interpreter who is competent to interpret in the accused's particular dialect. And just because the accused and the interpreter are both Chinese any difficulty which may arise will not be apparent to the Magistrate; which is what happened in the case now before me. Magistrates must, therefore, ensure as a matter of routine in their Courts, that interpreters ascertain the language or dialect of the accused in all cases and inform the Court of any difficulty there may be. One method of doing this (though I do not lay this down as the best or only method) is to make a practice of writing after the name of the accused in notebook his own dialect and the dialect which is being used. Thus in the present case the record might have read as follows :—

"Accused Huang Chin Shiu, Khengchew, speaking Hokkien . . . "

If this had been done the difference between the two dialects would have put the Magistrate on his guard.

I have already in a recent judgment drawn attention to the importance of an accused who pleads guilty receiving the same consideration before sentence as one who has claimed trial, and need not repeat my remarks here. Nor do I need to stress the importance of making sure that a plea of guilty is fully intended, because I am certain that Magistrates are fully alive to the importance of this. I cannot, however, overemphasise the great importance of making sure of always using an interpreter who is fluent in both the accused's own language and the language of the Court.

For the reasons given above I allowed the accused to withdraw his plea of guilty and remitted the case to the Magistrate for retrial.

Order accordingly.

GURCHURN SINGH v. THE CHARTERED BANK OF INDIA, AUSTRALIA & CHINA.

[Court of Appeal (Murray-Aynsley, C.J., Singapore, Abbott and Briggs, JJ.) November 18, 1951]

[J.B. — F.M. Civil Appeal No. 35 of 1951]

Debtor and Creditor (Occupation Period) Ordinance, 1948, s. 4(2)(b) and (c) — Payment caused by duress or coercion — Burden of Proof.

In this case the respondents applied for the reinstatement of a charge and the revaluation of a payment made to the Japanese Custodian of Property. Before the occupation the respondents were the holders of a charge on land belonging to the appellant. During the occupation the amount owing was paid to the Japanese Custodian by the appellant. The appellant argued that the payment made by him was caused by duress and coercion. The learned trial Judge found that the payment was not caused by duress and coercion and the appellant appealed against this finding.

Held, (1) that the burden of proof in this case was on the appellant and he must produce evidence to bring himself within the exception set out in section 4(1)(b) of the Debtor and Creditor (Occupation Period) Ordinance 1948; (2) that on the facts it was clear that the appellant would not but for fear of the consequences have paid off the loan and therefore he had discharged the burden of proof on him, the appeal must be allowed.

Cases referred to :—

(1) *Bank of China v. Lam Tai Cheng & others* (1951) M.L.J. 152.

(2) *Abdul Hameed & Co. v. A. M. S. Nainam Sahib & Co.* (1951) M.L.J. 103; 2 M.L.R. 71.

(3) *A. L. S. Sadayappa Chettiar v. P. C. R. ML. Letchumanan Chettiar* (1951) M.L.J. 105.

COURT OF APPEAL.

C. S. Jayaswal for the appellant.

F. G. Vaux for the respondents.

The facts and arguments appear sufficiently from the judgments.